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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy

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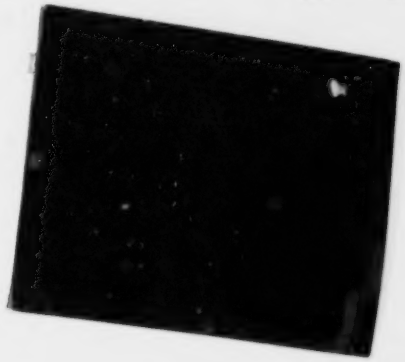

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Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 1996/34 of 19 April 1996. This report is the third annual report to the Commission on Human Rights by Mr. Param Cumaraswamy, since the mandate was established by the Commission in its resolution 1994/41 of 4 March 1994 and endorsed by the Economic and Social Council in its decision 1994/251 of 22 July 1994. (See also E/CN.4/1995/39 and E/CN.4/1996/57.)

2. Chapter I of the present report contains the terms of reference for the discharge of the mandate. Chapter II refers to the methods of work applied by the Special Rapporteur in the discharge of the mandate. In chapter III, the Special Rapporteur presents an account of the activities undertaken within the framework of his mandate in the past year. Chapter IV provides a brief discussion on a number of theoretical issues which the Special Rapporteur considers to be important for the development of an independent and impartial judiciary. Chapter V contains brief summaries of urgent appeals and communications to and from Governments, along with observations of the Special Rapporteur. Lastly, chapter VI contains the conclusions and recommendations of the Special Rapporteur.

I. TERMS OF REFERENCE

3. At its fiftieth session, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks:

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations including the provision of advisory services or technical assistance when they were requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

4. In its resolution 1995/36 the Commission endorsed the decision of the Special Rapporteur to use, beginning in 1995, the short title "Special Rapporteur on the independence of judges and lawyers".

5. In resolutions 1995/36 and 1996/34, respectively, the Commission on Human Rights took note of the first and second reports of the Special Rapporteur, expressing appreciation of his working methods, and requested him to submit another report on the activities relating to his mandate to the Commission on Human Rights.

6. Several resolutions adopted by the Commission on Human Rights at its fifty-second session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration by him in examining and analysing the information brought to his attention with regard to various countries, in particular:

(a) Resolution 1996/20 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, in which the Commission urged special rapporteurs to continue to give due regard, within their respective mandates, to the promotion and protection of the rights of persons belonging to minorities, and invited them to continue to submit contributions as to how they promoted and gave effect to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(b) Resolution 1996/32 on human rights in the administration of justice, in particular of children and juveniles in detention, in which the Commission called upon special rapporteurs to continue to give special attention to questions relating to the effective protection of human rights in the administration of justice and to provide specific recommendations in that regard;

(c) Resolution 1996/43 on the protection of human rights in the context of HIV and AIDS, in which the Commission urged the special rapporteurs to keep under review the protection of HIV-related human rights in relation to their respective mandates;

(d) Resolution 1996/46 on human rights and thematic procedures, in which the Commission invited the thematic special rapporteurs to include in their reports information provided by Governments on follow-up action; encouraged those special rapporteurs to make recommendations for the avoidance of human rights violations; also encouraged them to follow closely the progress made by Governments; further encouraged them to continue close cooperation with relevant treaty monitoring bodies and country rapporteurs; requested the thematic special rapporteurs to include in their reports comments on the problems of responsiveness and the result of analyses; called on them to include in their reports gender-disaggregated data and to address the violations under their mandates that are directed against women; and suggested that the special rapporteurs consider how they could make available information on the situation of individuals working for human rights and how their protection could be enhanced;

(e) Resolution 1996/47 on human rights and terrorism, in which the Commission urged all thematic special rapporteurs to address as appropriate the consequences of the acts, methods and practices of terrorist groups in their forthcoming reports to the Commission;

(f) Resolution 1996/48 on the question of integrating the human rights of women throughout the United Nations system, in which the Commission requested that the special rapporteurs regularly take a gender perspective into account in the implementation of their mandates;

(g) Resolution 1996/49, on the elimination of violence against women, in which the Commission requested other special rapporteurs to cooperate with and assist the Special Rapporteur on violence against women;

(h) Resolution 1996/51 on human rights and mass exoduses, in which the Commission invited the special rapporteurs, acting within their mandates, to seek information, where appropriate, on problems resulting in mass exoduses of populations or impeding their voluntary return home and, where appropriate, to include such information, together with recommendations thereon, in their reports, and to bring such information to the attention of the High Commissioner for Human Rights for appropriate action;

(i) Resolution 1996/53 on the right to freedom and expression, in which the Commission invited the special rapporteurs to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression;

(j) Resolution 1996/55 on advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights, in which the Commission invited the special rapporteurs to continue to include in their recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services and technical cooperation in the field of human rights;

(k) Resolution 1996/62 on hostage-taking, in which the Commission urged all thematic special rapporteurs to address, as appropriate, the consequences of hostage-taking in their forthcoming reports to the Commission;

(l) Resolution 1996/69 on human rights in Cuba, in which the Commission invited the thematic mechanisms to cooperate fully and exchange information and findings on the situation of human rights in Cuba;

(m) Resolution 1996/78 on comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action, in which the Commission called upon all special rapporteurs to take fully into account the recommendations contained in the Vienna Declaration and Programme of Action within their respective mandates;

(n) Resolution 1996/79 on the situation of human rights in Nigeria, in which the Commission requested the two special rapporteurs who had requested a joint investigative visit to the country (the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions) to submit to the Commission at its fifty-third session a joint report on their findings, along with any observations of other relevant mechanisms, and requested them to submit an interim report to the General Assembly;

(o) Resolution 1996/85 on the rights of the child, in which the Commission recommended that special rapporteurs pay special attention to particular situations in which children were in danger;

II. METHODS OF WORK

7. The Special Rapporteur, in the third year of his mandate, continued following the methods of work described in the first report of his tenure (E/CN.4/1995/39, paras. 63-93).

8. Seeking to avoid unnecessary duplication of the activities of other thematic rapporteurs, the Special Rapporteur has been involved in several cooperative initiatives. During the past year, he has joined with other Special Rapporteurs and working groups to transmit urgent appeals on behalf of individuals to the Governments of the following countries: Bolivia, together with the Working Group on Arbitrary Detention on 25 March 1996; Mexico, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions on 14 August 1996; Pakistan, jointly with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the question of torture on 16 July 1996.

III. ACTIVITIES OF THE SPECIAL RAPPORTEUR

9. The following sections give an account of the activities carried out by the Special Rapporteur in the implementation of the mandate entrusted to him by the Commission on Human Rights.

A. Consultations

10. The Special Rapporteur visited Geneva for his first round of consultations from 1 to 5 April 1996 and in order to present his report to the Commission at its fifty-second session. During this period the Special Rapporteur met with representatives of the Latin American, Asian, Eastern Europe and Western European and Other regional groups to brief them on his work as Special Rapporteur and to answer any questions they might have. He also held consultations with representatives of the Governments of Albania, Belgium, China and Peru and met with a representative of the Mexican Commission for Human Rights. In addition he held a briefing for interested non-governmental organizations.

11. The Special Rapporteur visited Geneva for his second round of consultations from 27 to 31 May 1996 for the third meeting of special rapporteurs/representatives/experts and chairmen of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, which was held from 28 to 30 May. During this period, the Special Rapporteur held consultations with representatives of the Government of Belgium, China, Colombia, India and Nigeria.

B. Missions/visits

12. During 1996, the Special Rapporteur undertook a mission to Peru and Colombia, as a follow-up to concerns expressed in his 1996 report with regard to the situation of the judiciary in those two countries. He visited Peru from 9 to 15 September 1996 and Colombia immediately after, from 15 to 17 September 1996.

13. In its resolution 1996/79, the Commission requested the Special Rapporteur and the Special Rapporteur on extrajudicial, summary or arbitrary executions who had requested a joint investigative mission to Nigeria to submit to it at its fifty-third session a joint report on their findings and to submit an interim report to the General Assembly.

14. Accordingly, the two Special Rapporteurs submitted an interim report (A/51/538) to the General Assembly on 18 November 1996 and a final report to the Commission at its fifty-third session (E/CN.4/1997/62), although the submissions of both reports were without the benefit of a joint investigative mission. In the event that the Special Rapporteurs are able to carry out a fact-finding mission to Nigeria prior to the fifty-third session of the Commission, it is their intention to issue a mission report.

15. During the period under review, the Special Rapporteur informed the Governments of the following countries of his wish to carry out an in situ investigation: Cuba, Kazakstan, Pakistan, Turkey and Uzbekistan.

16. During his visit to New York for the presentation of the interim report to the General Assembly on the situation of human rights in Nigeria, the Special Rapporteur also held consultations with officials of the United Nations Development Programme (UNDP) in New York and travelled to Washington, D.C. to meet with representatives of the World Bank, USAID, the Inter-American Juridical Committee, the International Human Rights Law Group and the American Society of International Law. While in Washington, D.C. the Special Rapporteur also visited Chief Justice William Rehnquist of the Supreme Court of the United States of America.

C. Communications with Governments

17. During the period under review, the Special Rapporteur transmitted 21 urgent appeals to the Governments of the following 16 countries: Algeria, Bahrain (2), Belarus, Belgium, Botswana, Colombia (2), India, Indonesia, Malaysia, Mexico, Pakistan, Peru (2), Tunisia, Turkey (2), the United States of America (2) and Uzbekistan. The Special Rapporteur transmitted three joint urgent appeals to the Governments of the following three countries: Bolivia (jointly with the Working Group on Arbitrary Detention), Djibouti (jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions) and Mexico (jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions).

18. The Special Rapporteur transmitted 17 communications to the Governments of the following 14 countries: Argentina, Australia, Bahrain (2), Bolivia, Botswana, Brazil, Côte d'Ivoire, Cuba (2), India (2), Malaysia, Mexico, Pakistan, Peru and Tunisia.

19. The Special Rapporteur transmitted one communication jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture to the Government of Pakistan.

20. The Special Rapporteur received replies to urgent appeals from the Governments of the following 11 countries: Algeria, Bahrain, Belgium, Botswana, Indonesia, Mexico, Pakistan, Tunisia, Turkey (2), United States of America and Uzbekistan.

21. Replies to joint urgent appeals were received from the Governments of the People's Republic of China and Mexico. Replies to communications were received from the Governments of Australia, Bahrain (2), Brazil, Cuba, India (2), Malaysia, Peru and Tunisia. Other communications were received from the Governments of the following eight countries: Bahrain, Burkina Faso, India, Kazakstan, Mexico, Peru (2), Tunisia (2) and Uzbekistan.

D. Cooperation with intergovernmental and non-governmental organizations

1. World Bank

22. The Special Rapporteur undertook a visit to Washington to discuss in detail the programmes relating to judicial reform funded by the World Bank. In this regard, the Special Rapporteur raised the question of possible funding for the preparation of a training manual for judges and lawyers, and submitted a budget for this project. The representatives of the World Bank with whom the Special Rapporteur met, while appreciating the importance of this project, indicated possible constraints on the World Bank funding projects of international organizations, such as the United Nations.

23. The Special Rapporteur also discussed ways and means of enhancing cooperation on projects financed by the World Bank for the administration of justice in Member States, in particular relating to judicial reform.

E. Other United Nations procedures and bodies

1. Cooperation with special rapporteurs and working groups of the Commission on Human Rights

24. In addition to the Special Rapporteur's participation in the special rapporteurs' meeting and in joint urgent actions transmitted to Governments, in 1996 the Special Rapporteur requested to undertake a joint mission to Nigeria with the Special Rapporteur on extrajudicial, summary or arbitrary executions. As referred to above, pursuant to resolution 1996/79 of the Commission on Human Rights, the Special Rapporteurs jointly followed up on their request, originally made in November 1995, to visit Nigeria.

25. With regard to the Special Rapporteur's request, dating from 1995 (see E/CN.4/1996/37) to visit Peru jointly with the Working Group on Arbitrary Detention, the Special Rapporteur wishes to inform the Commission that in view of the fact that the Working Group on Arbitrary Detention decided to undertake a mission at a later stage, he preferred to undertake the mission in combination with his mission to Colombia.

2. Cooperation with the Crime Prevention and Criminal Justice Branch

26. In his second report (E/CN.4/1996/37, para. 59), the Special Rapporteur referred to the important work of the Crime Prevention and Criminal Justice Division of the Secretariat in overseeing the implementation of the Basic Principles on the Independence of the Judiciary and the need for the Special Rapporteur to work closely with that Division.

27. The Special Rapporteur attended the fifth session of the Commission on Crime Prevention and Criminal Justice, held from 21 to 31 May 1996 in Vienna. Of particular interest to the Special Rapporteur was item 7 of the agenda in reference to the discussion on the status of implementation of the Basic Principles. Also of interest to the Special Rapporteur was the work of the Division in ascertaining the extent of the use and application of the Basic Principles on the Independence of the Judiciary by Member States pursuant to Economic and Social Council resolution 1993/34, section III, of 27 July 1993. For that purpose a questionnaire, duly endorsed by the Council in its resolution 1994/18 of 25 July 1994, was sent to all Member States and non-governmental organizations through the International Bar Association.

28. The Special Rapporteur notes with regret that only 65 Member States replied to the questionnaire, as well as 4 non-governmental organizations. The findings of the Division from these replies are of special importance to the Special Rapporteur. He repeats hereunder the five paragraphs from the conclusions of the report submitted by the Division (E/CN.15/1996/16/Add.4).

> "73. According to the information received, the Basic Principles enjoy respect in most countries. There appear to be only a few countries still needing to improve fundamental guarantees which would ensure the independence of the judiciary in all its aspects.
>
> "74. Further, as illustrated by the breadth and depth of the responses received, the principle of the independence of the judiciary is of central concern to many States. Judging from the responses, a large number of States were undertaking significant efforts to ensure the use and application of the Basic Principles in their national law and practice. Differences in legal tradition, however, particularly between common law and civil law countries, seem to suggest different approaches to the subject of judicial independence. That should be kept in mind when providing technical assistance.
>
> "75. As has been pointed out, the promotion and protection of judicial independence requires an ongoing commitment on the part of all States. No matter how well established the independence of the judiciary may be, constant vigilance and international cooperation are necessary to ensure continuing respect for judicial independence.
>
> "76. The Commission may wish to discuss further ways and means of assisting States, upon request, in the enhanced use and application of the Basic Principles. The suggestions made by the Special Rapporteur, as well as the proposals agreed upon by the Meeting of Experts for the Evaluation of Implementation of United Nations Norms and Guidelines

in Crime Prevention and Criminal Justice, held at Vienna from 14 to 16 October 1991 (E/CN.15/1992/4/Add.4), could provide useful indications to the Commission.

"77. Further, the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, as adopted by the Council in its resolution 1989/60 of 24 May 1989, offer additional guidance. The Procedures specify, inter alia, that States shall ensure that the Basic Principles are widely publicized in at least the main or official language or languages of each State. In particular, States shall make the text of the Basic Principles available to all members of the judiciary (Procedure 4). In addition, States shall encourage seminars and courses at the national and regional levels on the role of the judiciary in society and the necessity for its implementation (Procedure 6), which shall also be promoted by the United Nations (Procedure 11 d). According to Procedure 14, the Commission shall identify existing obstacles to, or shortcomings in, the implementation of the Basic Principles and the reasons for those obstacles or shortcomings, making specific recommendations, as appropriate, to the General Assembly and the Council, and to any other relevant United Nations human rights bodies."

29. The Special Rapporteur will continue liaising with the Crime Prevention and Criminal Justice Division and work closely with it towards greater dissemination of the Basic Principles on the Independence of the Judiciary, and their application by Member States. The Special Rapporteur notes that the Division anticipates undertaking a similar survey on the implementation of the Basic Principles on the Role of Lawyers and of the Guidelines on the Role of Prosecutors.

3. UNDP

30. As mentioned above, the Special Rapporteur met with officials of UNDP in New York on 19 November 1996 to establish a mode of cooperation with respect to the work of UNDP in assisting in the reform and development of institutions relating to the administration of justice. The Special Rapporteur learned that UNDP is very much decentralized and that its office in New York does not control projects undertaken by field offices in the 134 countries in which UNDP is located. However, the officials assured the Special Rapporteur that they would inform him of general UNDP policy matters affecting the administration of justice.

4. Cooperation with the Activities and Programmes Branch of the Centre for Human Rights

31. In his second report, the Special Rapporteur welcomed the efforts by the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights to develop a training manual for judges and lawyers (E/CN.4/1996/37, para. 61). The Special Rapporteur is currently collaborating with the Activities and Programmes Branch of the Centre in the drafting of this manual, which is being developed in the context of the United Nations Decade for Human Rights Programme. Following the completion of the draft manual, a meeting of experts will be convened sometime in May 1997 to consider

the draft and it is expected that the manual will be ready for use by the end of the year. The Special Rapporteur expects this manual, which will contain relevant international standards, to be invaluable in training programmes for judges and lawyers throughout the world.

F. Promotional activities

32. As part of his mandate to promote the importance of the independence of the judiciary and the legal profession for respect for the rule of law in a democratic society, in the spirit of the Vienna Declaration and Programme of Action, the Special Rapporteur accepted several invitations to address legal forums, seminars and conferences including the following:

(a) On 22 March 1996, at the invitation of the International Commission of Jurists, he addressed the Tenth International Commission of Jurists Workshop on NGO participation in the African Commission on Human and Peoples' Rights in Ouagadougou, Burkina Faso;

(b) In Lima on 9 September in conjunction with his mission to Peru, the Special Rapporteur addressed the opening session of the Andean Regional Conference of Judges and Lawyers. The theme of the Special Rapporteur's address was "Securing judicial independence";

(c) In Bangkok, on 27 August, at the invitation of the Asian Institute for Development Communication, the Special Rapporteur addressed participants from the Asian region at a seminar on "the media and the role of an independent judiciary in a democracy" on the subject of "Securing an independent judiciary - regional and international norms";

(d) In Berlin, in conjunction with the Biennial Conference of the International Bar Association (IBA), on 19 October, he addressed participants on the subject of "Independence of the judiciary and the role of the Special Rapporteur". The seminar was organized by the newly formed IBA Human Rights Institute;

(e) In conjunction with the same Biennial Conference, at the invitation of the Judges Forum of the IBA, on 22 October, the Special Rapporteur addressed judges from all over the world on "The dimensions of judicial independence and the role of the Special Rapporteur";

(f) In Colombo, Sri Lanka, on 14 December, at the invitation of the Sri Lanka Bar Association, the Special Rapporteur delivered a keynote address at the opening session of a seminar entitled "Towards realization of human rights through a just rule of law", organized by the Bar Association jointly with the IBA Human Rights Institute. This seminar was opened with an address by the Chief Justice of Sri Lanka. Following his address, the Special Rapporteur was interviewed by journalists on the issue of judicial independence and, in particular, on judicial appointments. The interviews were given wide coverage by the Sri Lankan newspapers.

33. It is learnt that the speeches made by the Special Rapporteur on these occasions will be published by the organizers of these conferences in newsletters and periodicals for wider dissemination.

34. The Special Rapporteur expresses his regret that, owing to time constraints, he could not accept various other invitations from the legal community.

IV. THEORETICAL ISSUES OF SPECIAL IMPORTANCE

A. The use of "faceless" tribunals

35. In his second report to the Commission on Human Rights, the Special Rapporteur considered the information he had received on the extensive use of "faceless" judges and secret witnesses as a means of protecting the judiciary from acts of terrorism (see E/CN.4/1996/37, paras. 66-78). The issue is of particular concern to the Working Group on Arbitrary Detention. It was also a subject of concern reported on in the joint report of the Special Rapporteurs on the question of torture and on extrajudicial, summary or arbitrary executions on their mission to Colombia from 17 to 26 October 1994 (E/CN.4/1995/111, paras. 14 and 85).

36. On making his preliminary observations on this issue, the Special Rapporteur said, inter alia:

> "The Special Rapporteur is of the view that such special procedures violate the independence and impartiality of the justice system for a variety of reasons. The Special Rapporteur is, however, mindful of the need to protect the security of individual judges in terrorist-related cases. However, this issue requires further study and analysis. During the course of the coming year the Special Rapporteur hopes to carry out a mission to Peru and Colombia to investigate these practices in situ and to do a more exhaustive survey worldwide of similar practices before stating his final conclusions and recommendations." (E/CN.4/1996/37, para. 78.)

37. It was in that context that the Special Rapporteur undertook a mission to Peru from 9 to 15 September 1996, and a mission to Colombia from 16 to 27 September 1996 at the invitation of the respective Governments. The information and materials the Special Rapporteur received in the course of the missions went beyond the issue of the use of "faceless" judges in the two countries. But such information and materials were most pertinent to the mandate of the Special Rapporteur.

38. The Special Rapporteur noted the constitutional changes in the two countries and the related complexities of the transitional process. In Peru this transitional process included the institutional reform of the administration of justice, which was in progress. He has learnt that progress on these reforms has been suspended following the hostage taking by the Revolutionary Movement of Tupac Amaru in the residence of the Ambassador of Japan in Lima 17 December 1996, and at the time of finalizing of the present report 72 hostages are still confined in the residence.

39. At the conclusion of his mission to Peru, the Special Rapporteur met the media and issued a statement on his preliminary observations, among them a call for the abolition of the "faceless" tribunals. In that regard, he said:

"There is no doubt that the 'faceless' tribunals tried many cases without observing the rules of due process. Owing to this serious flaw, several innocent people were wrongly convicted and sentenced. The very purpose of the due process procedure enshrined in the Constitution of Peru and international instruments is to see that only the guilty are convicted and punished.

These tribunals should no longer be continued. They should be abolished forthwith. All pending cases should be transferred to be tried by the ordinary courts.

In any event, in the light of the considerable improvement in the security situation, there is no longer any justification to continue with these tribunals.

Further, amidst bold measures to reform the administration of justice and enhance respect for human rights, the continuation of these tribunals makes a mockery of the reforms."

40. From the materials given to him during the mission on this issue, it was also clear that these tribunals no longer protected the security of judges, prosecutors and witnesses. Further, there had already been an admission from the Government that several innocent people had been convicted by these tribunals, as a result of which the Government of Peru set up the Ad Hoc Commission on Pardons to evaluate those cases of miscarriage of justice and to advise the President to pardon those wrongly convicted and sentenced. For all these reasons, the Special Rapporteur is convinced at this stage that these tribunals should be abolished forthwith.

41. While in Colombia, the Special Rapporteur sought extensive information from the Ministry of Justice, among others. This information was received by the Special Rapporteur on 14 January 1997. The Special Rapporteur also had discussions with representatives of the Ministry of Foreign Affairs over the then ongoing discussions between the Government of Colombia and the High Commissioner for Human Rights to set up a United Nations mechanism in Colombia to monitor human rights violations in the country. The Special Rapporteur is pleased to note that agreement has been reached between the Government and the High Commissioner. Currently, the structure of the mechanism is being worked out. The Special Rapporteur considers that this mechanism would be a useful means of receiving and disseminating information in Colombia on matters pertaining to his mandate.

42. In the light of the complexities and developments in the two countries, outlined above, the Special Rapporteur considers that he would need more time to evaluate and analyse the materials he received before he finalizes separate reports on each of the countries.

43. On the particular issue of the use of "faceless" judges in dealing with terrorist related offences, and as indicated in his second report, the Special Rapporteur is seeking resources, both human and financial, to make an

exhaustive survey worldwide of similar practices in procedures dealing with terrorist related offences. Such a study could provide information which would be of use in determining whether the prevailing standards are sufficient to deal with such crimes.

B. Conflicts between the legal profession and the judiciary

44. In presenting his second report to the Commission on Human Rights at its fifty-second session, the Special Rapporteur spoke of the interest of the International Bar Association in working closely with him to develop a mechanism to resolve disputes between the judiciary and bar associations Member States. The Special Rapporteur is still in the process of negotiating with IBA on the structure of such a mechanism, bearing in mind that IBA is a non-governmental organization.

C. Establishment of an international criminal court

45. The Special Rapporteur appreciates the continuing work being undertaken by all concerned for the establishment of an international criminal court. In his second report, the Special Rapporteur referred to article 10 of the draft statute, which provided for the independence of the court and called for strict implementation of that article when the statute was adopted and the court established (E/CN.4/1996/37, para. 80). The Special Rapporteur referred to the possibility that, in the beginning after the court is established, judges may not be full-time with fixed remuneration. He expressed the importance of ensuring that judges are full-time members of the court with fixed remuneration as soon as possible, in order to secure the individual independence of its members.

46. The Special Rapporteur's attention has been drawn to the current draft statute which provides that only States parties to the statute or the Security Council may initiate investigations of a crime under the court's jurisdiction. It is felt that the denial of the right of the prosecutor to initiate investigations could seriously impede the independence of the court. The Special Rapporteur is considering intervening with his views on this matter.

D. The media and the judiciary

47. Since raising the matter of the media and the judiciary in his second report (E/CN.4/1996/37, paras. 83-85), the Special Rapporteur had discussions with the International Commission of Jurists and the Special Rapporteur on the question of freedom of opinion and expression. No programme has yet been formalized, but the Special Rapporteur will pursue this matter in the coming months, subject to the availability of resources.

E. Trial observation

48. The Special Rapporteur has been investigating the possibility of himself or a representative observing important trials. During conversations with a representative of one State (the People's Republic of China), he was informed that there were express prohibitions in that State's national legislation that

might be an obstacle to the undertaking of such activities. The Special Rapporteur is, however, pursuing the feasibility of trial observations.

F. Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA region

49. The Special Rapporteur in his promotional activities, particularly in the LAWASIA (Law Association of Asia and the Pacific) region, has been making reference to these principles to develop greater awareness (see E/CN.4/1996/37, paras. 86-91). In his letters of intervention in the LAWASIA region he draws the attention of Governments to specific principles contained in this Statement.

V. COUNTRY SITUATIONS

50. This chapter contains brief summaries of the urgent appeals and communications transmitted to Governments, as well as replies received from the Governments to allegations. In addition, the Special Rapporteur takes note in this chapter of the activities of other mechanisms which are related to his mandate. Where he has deemed it necessary, the Special Rapporteur has included his own observations. He wishes to emphasize that appeals and communications reflected in this chapter are based exclusively upon information that has been transmitted to him directly. Further, he deeply regrets that lack of sufficient human resources has prevented him from acting upon all of the information transmitted to him during the past year, and he apologizes to the organizations which have provided him with well documented and researched reports on particular situations. The Special Rapporteur also recognizes that problems concerning the independence and impartiality of the judiciary are not confined to countries mentioned in this chapter. In this regard, he wishes to emphasize that the omission of a particular country from this chapter should not be interpreted as indicating that the Special Rapporteur considers that there are no problems with the judiciary in that country.

51. In preparing the present report, the Special Rapporteur took note of those drawn up by his colleagues, Mr. Paulo Sérgio Pinheiro, Special Rapporteur on the situation of human rights in Burundi (A/51/459, paras. 51-54 and E/CN.4/1997/12, paras. 27-32); Mr. Thomas Hammarberg, Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/1997/85, paras. 61-80); Mrs. Elisabeth Rehn, Special Rapporteur on the situation of human rights in the Former Yugoslavia (E/CN.4/1997/56, paras. 32-36, para. 56 (Bosnia and Herzegovina), paras. 88-90 (Croatia)); Mrs. Monica Pinto, independent expert on the situation of human rights in Guatemala (E/CN.4/1997/90, paras. 17-36); Mr. Adama Dieng, independent expert on the human rights situation in Haiti (E/CN.4/1997/89, paras. 33-78); Mr. Rajsmoor Lallah, Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/1997/64, paras. 28-30); and Mr. René Degni-Ségui, Special Rapporteur on the situation of human rights in Rwanda (E/CN.4/1997/61, paras. 95-98).

Albania

52. In his 1996 report to the Commission on Human Rights, the Special Rapporteur reported on allegations that he had transmitted to the Government and the response to those allegations provided by the Government (E/CN.4/1996/37, paras. 104-114). Of particular concern was the allegation that the executive had initiated action in Parliament to strip the Chairman of the Court of Cassation of his immunity. The Government had responded that the removal of the immunity of the Chairman and the approval of penal proceedings against him had been made in accordance with article 6 of Law No. 7561 dated 29 April 1992.

53. The Special Rapporteur has subsequently learned that the Chairman has in fact been dismissed from the Court of Cassation and that the Constitutional Court ruled on 14 February 1996 that the dismissal was legal because the Chairman had committed a serious criminal offence. The Constitutional Court held that the unconstitutionality of the Chairman's actions, specifically, suspending the execution of certain decisions, was sufficient to constitute a serious criminal offence.

54. The Special Rapporteur notes that no criminal charges were brought against the Chairman. Further, suspending the execution of certain decisions would appear to fall within the normal duties of an appellate court and certainly cannot be considered a criminal offense. Non-governmental sources claim that the Chairman was removed in order to subordinate the Court to the executive, and that the Government falsified the parliamentary vote to do so.

55. The Special Rapporteur welcomes reports that the Parliament passed a law in July 1996 to establish a government subsidized magistrate's school, to assure the professional training of judges and prosecutors. It will reportedly include in its programme mandatory initial training of candidates for magistrate positions, as well as the continuing education of magistrates.

Algeria

56. On 7 August 1996, the Special Rapporteur transmitted an urgent appeal to the Government of Algeria regarding Rachid Mesli, a lawyer and human rights defender, who was reportedly abducted by four unknown individuals on 31 July 1996. It was feared that he had been abducted by members of the security forces for reasons related to his active involvement as a lawyer in human rights issues.

57. The Government informed the Special Rapporteur on 28 August 1996, that Rachid Mesli had not been abducted, but that he had been interrogated on 31 July 1996 by security forces in the context of cases relating to terrorism and subversion. In addition, he had been officially accused, jointly with a group of persons suspected of having been involved in terrorist activities, and had been put in preventive detention by the competent authorities. The preliminary investigation had been carried out in accordance with the law.

Argentina

58. On 10 June 1996, the Special Rapporteur sent a communication to the Government of Argentina, acknowledging receipt of the Government's communication of 13 December 1995 with regard to the case of a lawyer, Leon Zimmerman, which he had transmitted to the Government in 1995 (see E/CN.4/1996/37 paras. 115-116). The Special Rapporteur welcomed the release of Mr. Zimmerman, but requested additional information with regard to the status of Judge Elicabe Gonzales, who had reportedly been removed from the case.

59. At the time the present report was finalized, no reply had been received from the Government of Argentina.

60. In addition, the Special Rapporteur would like to refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions in relation to the case of a lawyer, Frederico Alberto Hubert, who reportedly has continuously been threatened and intimidated while working on the case of Diego Rodriguez Laguenz, who died while in police detention in 1994 (see E/CN.4/1997/60/Add.1, paras. 22-23).

Australia

State of Victoria

61. In his second report, the Special Rapporteur drew the attention of the Commission on Human Rights to proposals by the State Government of Victoria in Australia for the reform of the legal profession in that state (E/CN.4/1996/37, paras. 118-124). Proposals for a draft legal practice bill to replace the Legal Practice Act of 1958 had been released by the Attorney General in December 1995 for public comment. Of concern to the Law Institute of Victoria, a statutory body and the professional and regulatory organization for solicitors, was the proposal to set up a separate regulatory body to license lawyers to practice. The Institute felt that such a separate body would affect the independence of the profession in the state.

62. The Special Rapporteur expressed the opinion that the proposals had the effect of doing away with a single organization for lawyers, such as the Law Institute was, and thus, fragment the legal profession, resulting in the formation of pockets of associations.

63. The Special Rapporteur has since received information from the Law Institute of Victoria. The draft bill, after much analysis, debate and negotiation, was enacted into law and came into effect on 1 January 1997. The Act provides for a separate Legal Practice Board. The Board consists of a retired judge of the Supreme Court of Victoria, three lawyers chosen by the Law Institute and the Victoria Bar Council, and three lay persons chosen by the Government. Although the Law Institute and the Victoria Bar Council are at present accredited by the Legal Practice Board as recognized "professional associations", other legal professional associations may seek accreditation. Thus, it is now possible for the legal profession in the State of Victoria to be fragmented and its unity may be adversely affected.

64. In his second report, the Special Rapporteur referred to action initiated by 9 of the 11 judges of the Accident Compensation Tribunal who alleged that they had been dismissed without alternative appointments or compensation by the State Government following the repeal of the legislation that had created the Tribunal. The Special Rapporteur expressed his interest in observing the proceedings personally or to send a representative, (E/CN.4/1996/37, paras. 125-126). Of interest to the Special Rapporteur in this particular action was the issue of security of tenure of judges of the subordinate courts and statutory tribunals.

65. The Special Rapporteur received information that the hearing was to take place for two weeks from 2 December 1996 before the Federal Court in Victoria. However, on 2 December 1996, the nine judges settled the claim with the State Government for an undisclosed sum.

Bahrain

Communication to the Government

66. On 25 March 1996, the Special Rapporteur transmitted an urgent appeal to the Government of the State of Bahrain, concerning the alleged detention of a lawyer, Ahmad al-Shamlan. He was reportedly arrested by members of the Bahraini State Intelligence Service under the 1974 Decree Law on State Security Measures, which permits detention without charge or trial for up to three years of any person suspected of being a threat to state security. The source furthermore alleged that Mr. al-Shamlan had been detained because of his prominent role in the pro-democracy movement in Bahrain and because he had acted as defence lawyer for many prisoners who were reportedly prosecuted in connection with political protests. It was therefore feared that Mr. al-Shamlan was being harassed for carrying out his professional duties and exercising his right to freedom of opinion and expression.

67. On 17 May 1996, the Special Rapporteur sent a letter to the Government in which he referred to the Government's communication of 17 April 1996 (see para. 70 below), concerning the arrest and detention of Mr. al-Shamlan. The Special Rapporteur urged the Government to inform the lawyer promptly of the criminal charges brought against him and to bring him before a judge or other officer authorized by law and, if no such charges were brought against him to release him immediately.

68. On 16 October 1996, the Special Rapporteur transmitted a letter to the Government concerning the trials of persons charged with criminal offences against the State of Bahrain. According to the source, Amiri Decree No. 7 of 1976, which established the State Security Court, sets forth exceptional provisions governing its proceedings. The source reported that these provisions deny defendants the right to a fair trial. In particular, the Special Rapporteur was informed that defendants are not allowed access to legal counsel until they are brought to the State Security Court. As a result, defendants can only appoint lawyers of their own choosing on the first day of their trial, just before the opening session of the court. The State Security Court reportedly appoints lawyers for defendants who fail to secure legal representation on their own. Furthermore, defence lawyers allegedly do not have access to court documents, nor do they have adequate time to prepare

a defence for their clients. The source also claimed that the lawyers are given limited access to their clients during the trials. Despite the fact that article 5 (4) of Amiri Decree No. 7 of 1976 states that sentencing shall be pronounced in public sessions, and that the sessions of the State Security Court shall be held in public unless it is deemed necessary to hold them in camera, sessions allegedly are always held in camera, attended only by members of the Bench, the defendants, defence lawyers and representatives of the Public Prosecution. Sentencing is also reported to take place in closed sessions.

69. On 18 November 1996, the Special Rapporteur transmitted an urgent appeal to the Government concerning the death sentences issued against 'Ali Ahmad Abed al-Usfur, Yousef Hussein 'Abdelbaki and Ahmad Ibrahim al-Kattan. A previous urgent appeal had been sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 3 July 1996 (see E/CN.4/1997/60/Add.1, para. 44). According to the source, these three individuals were sentenced to death following an unfair trial before the Security Court. The men were reportedly incriminated by the Minister of Interior before they were brought to court, thus violating the principle of the presumption of innocence. The source also claimed that this could also be considered an inappropriate and unwarranted interference with the judicial process. In addition, the Special Rapporteur was informed that the three were amongst eight persons who were to be brought to trial under the Penal Procedures Law of 1996, which was not in effect at the time of the incident of which they were accused. Allegedly, the authorities brought the defendants before the State Security Court under Decree No. 10, which was issued six days after the incident. The Special Rapporteur was informed that the defence lawyers had protested and issued a joint note against the retroactive application of that Decree. It was also alleged that the defendants were detained incommunicado, and that they were denied access to legal counsel until immediately prior to the opening session of the trial, which was held in secret. The Supreme Court was reported to have ruled on 27 October 1996 that it did not have jurisdiction over the State Security Court's verdict. As a consequence, the three men were at risk of being executed without having had the right to appeal their sentences to a higher jurisdiction.

Communications from the Government

70. On 17 April 1996, the Government provided the Special Rapporteur with a reply regarding the case of Ahmed al-Shamlan. According to the Government, the information received by the Special Rapporteur was incorrect. Mr. al-Shamlan had not been arrested for any of the alleged reasons but for criminal activities unrelated to the conduct of his professional duties. Furthermore, he was in lawful custody and his right to due process was guaranteed. The Government also referred to the recent situation of unrest in Bahrain and stated that the information should be viewed against that background.

71. On 23 May 1996, the Government informed the Special Rapporteur that Mr. Ahmad al-Shamlan had been released on bail on 15 April 1996. On 5 May 1996, he was acquitted in court of the charges brought against him.

72. On 18 June 1996, the Government provided the Special Rapporteur with a copy of a communiqué issued by the Ministry of the Interior of the State of Bahrain relating to an alleged plot to seek to overthrow the Government of the State of Bahrain and to destabilize peace in the region.

73. On 25 November 1996, the Government provided a reply to the Special Rapporteur's communication concerning Amiri Decree No. 7 of 1976. The communication contained a reply which had been sent to the Working Group on Arbitrary Detention of the Commission on Human Rights in 1992 with regard to the same issue. According to this information, the State Security Legislation is composed of the Administrative Emergency Measures (1974 State Security Law) as well as ordinary criminal law (1976 Penal Code). Both laws are subject to judicial review procedures as laid down in law. It is the policy of the Government of the State of Bahrain that security cases are dealt with under criminal law, and not under administrative procedures of the 1974 State Security Law. At the same time, it was acknowledged that "the 1974 State Security Law is an exceedingly valuable counter-terrorist measure". Under this legislation, proceedings before the State Security Appeal court are mandatorily "in camera". Article 1 of the 1974 State Security Law provides that persons arrested by order of the Minister of the Interior for committing any of the acts set out in the law may (subject to judicial review) be detained for a period not exceeding three years. Anyone arrested under this provision has the right to appeal to the High Court after three months and thereafter periodically, every six months. If this right is not exercised, the prosecuting authority shall exercise this right for purposes of validating the Minister's arrest order (art. 4).

74. In addition to this procedure, which is related to "highly sensitive information", the criminal acts set out in the ordinary 1976 Penal Code are subject to the 1966 Code of Criminal Procedure, article 5 of which provides that sessions are public unless the Court decides otherwise. The Code furthermore provides, with regard to appeals, that, since criminal proceedings are of an inquisitorial nature, the verdict of the court is not subject to appeal. However, such a verdict must be viewed in the light of prior judicial findings in proceedings before the remand (review) investigatory courts. The criminal Security Court, moreover, is in fact the High Court of Appeal. Clemency following conviction may always be petitioned to the Amir. In the event of acquittal, there is no remedy available to the prosecution.

75. The Court of Cassation, formed under Law No. 8 of 1989 has not yet exercised any appellate jurisdiction over criminal security cases, in spite of its technically supreme appellate status, on points of law only.

Observations

76. The Special Rapporteur remains concerned that the trials before the State Security Court violate article 14 of the International Covenant on Civil and Political Rights owing to the apparent lack of due process in the Court. The Special Rapporteur will continue to monitor further developments concerning the use of the State Security Court by the State of Bahrain.

Belarus

77. On 12 November 1996, the Special Rapporteur sent an urgent appeal to the Government of Belarus concerning information he had received that President Alyaksandr Lukashenka was reportedly in the process of suspending the Constitutional Court, following its decision regarding the referendum on two draft constitutions, one prepared by the President and one prepared by the Parliament. It was also reported that the President had stated that he would ignore the Court's decision. In addition, it had been brought to the Special Rapporteur's attention that earlier in 1995 the President had already threatened to take decisive action if the court did not change a specific ruling. At that time, the President had allegedly threatened to dismiss the Court's chairman, following five decisions of the Court ruling that certain presidential decrees were unconstitutional. The Special Rapporteur expressed his concern over these allegations and requested the Government to provide him with information.

78. A reply was received from the Government on 10 January 1997, in reaction to the Rapporteur's appeal of 12 November 1996; the reply had not yet been translated at the time the present report was finalized.

Belgium

Communication to the Government

79. On 28 October 1996, the Special Rapporteur sent an urgent appeal to the Government of Belgium concerning information he had received pertaining to the ongoing demonstrations in Belgium following the dismissal of a magistrate investigating a case of child prostitution, kidnapping and murder. The Special Rapporteur stated that while the dismissal of the magistrate may have been appropriate under Belgian law as his actions called into question his impartiality in the matter, it had underscored a perception that the system by which magistrates and judges were appointed, promoted and dismissed was motivated by political and/or partisan interests. The Special Rapporteur had been informed that that had resulted in a lack of public confidence in the judicial system in Belgium. In addition, the Special Rapporteur expressed his deep concern about the media reports alleging that the judicial system in Belgium was perceived by the public as being corrupt. The Special Rapporteur further noted his appreciation of the Prime Minister's assurance that his Government would press for constitutional reforms, inter alia, to stop the appointment of magistrates on the basis of political considerations. The Special Rapporteur requested that he be kept informed of such proposals. Lastly, the Special Rapporteur suggested meeting with the Prime Minister, the Minister of Justice and the President of the Cour de Cassation during his next visit to Europe, in order to discuss the proposed reforms.

Communication from the Government

80. The Government acknowledged receipt of the Special Rapporteur's letter on 4 November 1996 and a substantive reply was received on 11 December 1996. The information transmitted by the Government included a copy of the Belgian Constitution and a copy of the Government's proposal to revise Article 151 of the Constitution.

81. The Government of Belgium acceded to the request of the Special Rapporteur for a meeting in Brussels to discuss the proposal to reform the procedure for the appointment of magistrates and judges. The Special Rapporteur has informed the Government that he will notify it of the dates on which he will next be in Europe.

Bolivia

82. On 25 March 1996, the Special Rapporteur sent an urgent appeal, jointly with the Chairman of the Working Group on Arbitrary Detention, concerning the case of a lawyer, Mr. Morales Dávila, who had reportedly been detained since 7 March 1996. According to the information received, he had been accused of sedition and contempt of presidential authority following his public declarations against government economic policies regarding plans for "capitalizing" a state-owned oil and gas company. Mr. Morales Dávila was allegedly held incommunicado since 16 March 1996 and had been denied access to lawyers and family. In addition, the penal judge was reported to have failed to rule on the habeas corpus petition which had been presented by the Bolivian Bar Association on his behalf.

Follow-up

83. On 24 June 1996, the Special Rapporteur sent a follow-up communication to the Government of Bolivia, regarding the case of Mr. Manuel Morales Dávila, reminding the Government of his communication of 25 March 1996.

84. At the time the present report was finalized, no reply had been received from the Government.

Botswana

85. On 7 May 1996, the Special Rapporteur sent an urgent appeal to the Government of Botswana concerning the case of Mr. A.C.N. Nchunga, a senior magistrate in Botswana. According to the source, Mr. Nchunga had been removed from the Office of Senior Magistrates with immediate effect, and it was alleged that no reasons had been given for that removal.

86. On 23 May 1996, the Government provided the Special Rapporteur with a reply to his letter of 7 May. It contained detailed information regarding the constitutional provisions concerning removal proceedings and criteria. The Special Rapporteur was informed that the recommendation for removal of Mr. Nchunga from office for reasons of inadequate behaviour had been made by an independent body, the Judicial Service Commission. In addition, the removal was carried out in accordance with the provisions of the Constitution, following a fair hearing. The Special Rapporteur was furthermore informed that Mr. Nchunga was transferred to a post with the same level of remuneration and rank, but of a less sensitive nature.

87. On 30 May 1996, the Special Rapporteur sent a letter to the Government in which he thanked it and expressed appreciation for the information provided.

Brazil

88. On 12 December 1996, the Special Rapporteur sent a communication to the Government of Brazil concerning the murder of Francisco Gilson Nogueira de Carvalho, a lawyer and human rights activist. It was alleged that his assassination might be linked to his work as a lawyer and his investigations concerning the participation of members of the civilian police of Rio Grande do Norte in death squads. The Special Rapporteur requested information about the investigation into this killing. He was informed about a previous urgent appeal sent on 23 October 1996 by the Special Rapporteur on extrajudicial, summary or arbitrary executions in which reference had been made to this case (see E/CN.4/1997/60/Add.1, para. 62 (d)).

89. On 18 December 1996, the Special Rapporteur received a reply from the Government of Brazil indicating that the Federal Police were in charge of the investigation. In addition, the Governor of Rio Grande do Norte had dismissed the Deputy Secretary of State for Public Security, suspected of being involved with the group known as "meninos de ouro". Lastly, the Council for the Defence of the Rights of the Human Person of the Ministry of Justice had set up a special commission to investigate the allegations of human rights violations by the police of Rio Grande do Norte, in particular the activities of the above-mentioned group.

90. The Special Rapporteur would like to thank the Government of Brazil for its prompt response to his appeal and welcomes the positive steps taken in the case. However, he would request the Government to keep him informed on the progress of the investigation.

Burkina Faso

91. Following a meeting that the Special Rapporteur had with the Minister of Justice in Ouagadougou on 23 March 1996, on 12 July 1996, the Minister provided the Special Rapporteur with information about the guarantees with regard to the independence of judges and lawyers, provided for in article 129 of the 1991 Constitution as well as about recent legislation in that respect. In addition, the Special Rapporteur was informed how the recent modifications to legal provisions had increased the independence and impartiality of the judiciary and improved the implementation of human rights.

92. Ordinance 91-0052 relates to the establishment, organization and operation of the Supreme Council of Justice, which is the organ charged with disciplinary matters. The Chief of State, who is the President of the Council, and the Minister of Justice, who is Vice-President, do not participate in sessions relating to such measures. Another ordinance of special interest to the Special Rapporteur's mandate is Ordinance No. 91-979/PRES of 25 November 1991 on special provisions concerning procedures for the revision of sentences handed down by the People's Revolutionary Courts and the courts of special jurisdiction under the previous regime. The Special Rapporteur was informed that the conditions for review of sentences handed down by the courts mentioned had been extended and, as a

consequence, numerous applications for review had been addressed to the Minister of Justice. Furthermore, the State had been made to pay hundreds of millions of francs compensation to persons who had been prosecuted and punished by the People's Revolutionary Courts.

Chile

93. The Special Rapporteur was informed that on 31 October 1996, the Supreme Court of Justice had rejected the petition made by the military prosecutor to instruct all appeal courts to close legal proceedings relating to human rights violations committed before March 1978, under the military Government. By a majority vote of 14 of the 15 Supreme Court members, the ruling re-established the independence of the judiciary. The Court held that "judges are independent to decide ... on cases within their jurisdiction: in this regard, any external influences, from sources other than the judiciary, and internal influences from higher authorities ... are inadmissible".

People's Republic of China

Communications from the Government

94. On 18 March 1996, the Government of the People's Republic of China provided a reply to a joint urgent appeal sent by the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on freedom of opinion and expression on 14 December 1995 (see E/CN.4/1996/37, paras. 133-134). The Government replied that Wei Jingsheng had been involved in activities related to plotting to overthrow the Government while he was on parole and deprived of his political rights. The Special Rapporteur was informed that on 13 December 1995, the Beijing No. 1 People's Court held an open hearing of the case of Mr. Wei and, in accordance with the law, sentenced him to 14 years' imprisonment and 3 years' deprivation of political rights at first instance, for the crime of conspiring to overthrow the Government. The Government stated that the right to defence had been effectively guaranteed during the trial. In accordance with the law, in addition to the exercise of the right to defend himself during the proceedings, an accused person may engage lawyers or close relatives or other citizens to defend him. In addition, the accused person is informed about charges no later than seven days before the opening of the court session, so that he will be informed of the charges, and will have sufficient time to prepare his defence and contact his counsels. Lastly, the Special Rapporteur was informed that the proceedings had been carried out in accordance with national law and with international instruments, including provisions of the International Covenant of Civil and Political Rights, to which China has not yet acceded.

Colombia

Communications to the Government

95. On 18 March 1996, the Rapporteur transmitted an urgent appeal to the Government of Colombia, concerning death threats against Mrs. Margarita Arregoces and a human rights lawyer Mr. Reinaldo Villalba Vargas of the Lawyers' Collective (Corporación Colectivo de Abogados). The

message containing the threats was reportedly signed by a paramilitary group called COLSINGUE, and was also considered to be an indirect threat against Mr. Villalba Vargas who is defending Mrs. Arregoces in a trial which was initiated against her by the regional public prosecutor's office of Santafé de Bogotá.

96. On 12 December 1996, the Special Rapporteur sent an urgent appeal to the Government of Colombia concerning Pedro Julio Mahecha Avila, a lawyer and member of the lawyers' collective "Alvear Restrepo", who was reportedly being followed and watched by unknown individuals. In this context, the Special Rapporteur also referred to an urgent appeal sent previously to the Government by the Special Rapporteur on extrajudicial, summary or arbitrary executions. According to the source, in anonymous phonecalls various persons had allegedly tried to find out the whereabouts of Mr. Mahecha Avila, his wife and his son. It has been reported that those acts of intimidation might be linked to his work as the lawyer of persons who are detained for political reasons, including members of a guerrilla-group. The Special Rapporteur was informed that since the establishment of the lawyers' collective several of its members had been receiving death threats related to their work as human rights lawyers.

97. On 16 December 1996, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, concerning the reported assassination of Mr. Helí Gómez Osorio, a municipal ombudsman in the Department of Antioquia. Mr. Osorio was reportedly shot dead on 26 November 1996 by three men who allegedly belong to a paramilitary group when he was leaving the office of the mayor in El Carmen de Viboral. The Special Rapporteurs were informed that in recent years Mr. Osorio, in his professional capacity had publicly denounced violations of human rights, including assassinations carried out as "social cleansing". His name was reportedly included on a list of 33 persons who were accused of collaborating with the guerrilla. In addition, the Special Rapporteurs were informed about the killing of José Loaiza Correa, a municipal employee of Cañasgordas, whose dead body was reportedly found on 2 December 1996. It was alleged that he had also been killed by paramilitary. Further, 8 of the 15 municipal employees are reported to have resigned out of fear for their security. The Association of Municipal Employees was reported to have requested protection from the Ministry of Defence and Justice, which had reportedly not been provided. On the basis of this information, the Special Rapporteurs requested the Government to carry out a prompt investigation into the killings, and to provide the other municipal employees in the Department of Antioquía with protection.

Communications from the Government

98. At the time the present report was finalized, no reply had been received from the Government.

Côte d'Ivoire

99. On 19 June 1996, the Special Rapporteur addressed a communication to the Government of Côte d'Ivoire regarding a number of draft bills which were being prepared by the Minister of Justice and Public Liberties. One of these bills

might affect the status of the judiciary in Côte d'Ivoire. It had been brought to the Special Rapporteur's attention that certain provisions of that bill, in particular articles 6 and 50, might infringe the principle of the separation of powers, as well as the irremovability of judges. Furthermore, articles 10 and 16 of that reportedly might infringe upon the right of judges and lawyers to form associations. The Special Rapporteur requested information regarding the dates of the debate in Parliament of the draft bill and requested the Government to forward him a copy of it.

100. At the time the present report was finalized, no reply from the Government to this communication had been received by the Special Rapporteur.

Cuba

Communication to the Government

101. On 26 June 1996, the Special Rapporteur sent a letter to the Government of Cuba, reminding the Government of previous consultations with the High Commissioner for Human Rights in which the Government had expressed its willingness to consider inviting thematic mechanisms to undertake a mission to Cuba. The Special Rapporteur informed the Government of his wish to carry out an in situ investigation of the independence of the judiciary in Cuba, and to establish a dialogue with the relevant authorities with a view to identifying areas where technical or other assistance might be required, in order to strengthen the existing system of justice.

102. On 8 July 1996, the Special Rapporteur transmitted to the Government of Cuba a letter containing allegations regarding the cases of three lawyers, Leonel Morejón Almagro, René Gomez Manzano and Jorge Bacallao. Leonel Morejon Almagro, then executive secretary of the provisional organizing group for the "Concilio Cubano", a coalition of unofficial groups, including political parties and organizations of lawyers, journalists, women and trade unionists, was alleged to have been detained for nine hours on 14 November 1996. According to the information received, he was dismissed from his post at the Marianao Lawyers Collective by the National Directorate of Lawyers' Collectives, for alleged "technical deficiencies". He was reportedly arrested once more, for organizing a meeting for the national committee of the Concilio Cubano on 12 January 1996. On 22 February 1996, he was tried for "resistance" and condemned to six months' imprisonment, apparently for asking members of the State Security Police to identify themselves upon his arrest. The Special Rapporteur was also informed that his lawyer, Mr. José Angel Izquierdo Gonzalez, who only had last-minute access to his client and details of the case, was fined after the trial for stating publicly that the trial was a "sham". It was feared that he might be facing disciplinary measures.

103. René Gomez Manzano, one of the founders of the "Concilio Cubano", was reportedly dismissed from the lawyers' collective in October 1995 after criticizing the leadership of the National Assembly of Lawyers' Collectives. The information received by the Special Rapporteur indicated that the reason given for the dismissal of Mr. Gomez Manzano was that his behaviour "did not concord with official policy" and was alleged to be "incompatible with his participation in the lawyers' collective". It was also alleged that the dismissal was linked to his work as the defence lawyer for Mr. Abel del Valle,

about whose case he had publicly stated that the defence lawyers had been prevented from presenting their own witnesses and were not permitted to see so-called "secret documents" which reportedly were the mainstay of the prosecution's case. Furthermore, Mr. Gomez Manzano was reported to have spoken out on issues relating to the justice system in Cuba, in his capacity as president of an unofficial group called "Corriente Agramontista". Jorge Bacallao, a member of the same group, was reported to have been subjected to harassment and intimidation by members of the State Security Police to make him stop his activities on behalf of the "Concilio Cubano".

104. The Special Rapporteur was also informed that under Cuban law lawyers, all of whom are employed by the State, are obliged to observe and contribute to the strengthening of socialist legality. According to the information received, all legal services to the population are provided through bufetes colectivos, collective law offices, organized and supervised by the Ministry of Justice. The role of defence lawyers in cases of a political nature was reported to be severely limited, and the information received indicated that, for example, in cases of crimes against State security, defence lawyers were not permitted to have any direct contact with their clients during the first weeks or even months of pre-trial detention. Furthermore, a number of defence lawyers who had been outspoken in recent years were penalized in professional terms, and sometimes dismissed or threatened with physical violence.

105. At the time the present report was finalized, no substantive reply had been received from the Government to the allegations contained in his communication of 8 July 1996. However, in response to the request to visit Cuba, the Government recalled its discussions with the High Commissioner for Human Rights in 1994 concerning the question of invitations to thematic rapporteurs of the Commission. The Government noted that, on that occasion, it had reiterated its political position on cooperation with the human rights mechanisms of the United Nations that the same conditions should be applied to all Member States, based on the principles of objectivity, impartiality and non-selectivity. In that context, the Cuban authorities had stated that they would consider the possibility of inviting thematic mechanisms of the Commission on Human Rights when it was of interest and convenience for the country.

Djibouti

106. On 8 February 1996, the Special Rapporteur sent a joint urgent appeal to the Government of Djibouti with the Special Rapporteur on extrajudicial, summary or arbitrary executions, concerning allegations of threats and harassment against human rights lawyer Aref Mohammed Aref who, on 16 January 1996, was reportedly informed that certain police officers had received instructions to execute him. This information was subsequently reported to the Attorney General's office, whereon which Mr. Aref was informed that the threats would not be investigated, nor would he be provided with protection. In addition, Mr. Aref was reportedly followed constantly without his consent by two members of the Political Police. The allegations indicate that the threats might be linked to his professional activities, which included representation of victims of human rights violations.

107. At the time the present report was finalized, no reply had been received from the Government.

Ecuador

108. The Special Rapporteur was informed about the establishment of the Truth and Justice Commission, charged with investigating complaints of unresolved human rights violations in the past 17 years. The commission, which is mandated to publish its report and to file its findings and recommendations before the relevant judicial authorities, could serve as a measure to end impunity and ensure that victims and their relatives are adequately compensated for violations of their human rights.

Guatemala

109. The Special Rapporteur refers to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions in relation to the case of the death of an ex-member of the judiciary, José Vicente Gonzalez, a former judge, who reportedly died by the hands of the military in December 1995 after having received death threats on various occasions (E/CN.4/1997/60/Add.1, para. 188).

India

Communication to the Government

110. On 28 March 1996, the Special Rapporteur transmitted an urgent appeal to the Government of India concerning the alleged abduction of Jalil Andrabi, a lawyer, human rights activist and Chairman of the Kashmir Commission of Jurists, by government soldiers of the "Rashtriya Rifles". According to the information received, a habeas corpus petition was filed in the Srinigar High Court, but the "Rashtriya Rifles" reportedly denied that Mr. Andrabi was in their custody.

111. On 29 March 1996, the Special Rapporteur transmitted another communication to the Government of India, after receiving information that Mr. Andrabi's dead body had been found in a river on the morning of 27 March 1996. The Special Rapporteur requested the Government of India promptly to order an independent and impartial investigation, to make public the findings of such investigation and to bring to justice those responsible.

112. On 17 May 1996, the Special Rapporteur transmitted another communication to the Government in which he welcomed the prompt action taken by the Government in ordering an investigation into the murder of Jalil Andrabi. He requested additional information on the investigations.

Communication from the Government

113. On 2 April 1996, the Government provided the Special Rapporteur with a press statement by the spokesman of the Government of India. According to this press statement, a special team had been set up to investigate the case of the killing of Mr. Jalil Andrabi.

114. On 12 April 1996, the Government provided the Special Rapporteur with information regarding the investigation into the killing of Mr. Jalil Andrabi. According to the Government, the Jammu and Kashmir High Court was monitoring the investigations and the Advocate General of Jammu and Kashmir and the investigating team would be reporting directly to the Court. In addition, the National Human Rights Commission of India had launched an independent investigation into the matter.

115. On 2 May 1996, the Government provided the Special Rapporteur with updated information on the case of Jalil Andrabi, which had also been provided to the Special Rapporteur on extrajudicial, summary or arbitrary executions. In order to avoid unnecessary duplication, the Special Rapporteur refers to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1997/60/Add.1, para. 223).

Indonesia

Communications to the Government

116. On 23 October 1996, the Special Rapporteur transmitted an urgent appeal to the Government of Indonesia concerning the case of two lawyers, Bambang Widjojanto and Muchtar Pakpahan. According to the source, Mr. Bambang Widjojanto was reportedly facing the threat of arrest and criminal prosecution as a result of his refusal to answer a number of summonses arising from his legal representation of clients. The source also alleged that the summonses were an effort to undermine his professional obligations towards his clients and that they interfered with his representation of Muchtar Pakpahan and others. The authorities reportedly were attempting to intimidate other lawyers from undertaking and mounting a vigorous defence in controversial cases. In addition, Muchtar Pakpahan, who, according to the information received was a trade union lawyer, was reportedly arrested on 30 July 1996, on charges of being an accomplice in subversive activities. The Special Rapporteur was also informed that Mr. Pakpahan had been questioned about his involvement with "Mjelis Rakyat Indonesia", an alliance of 32 pro-democracy non-governmental organizations. It was alleged that his arrest and detention could be related to his work as a legal representative of workers and their concerns, and thus might interfere with his right to freedom of opinion and expression.

Communication from the Government

117. The Government provided the Special Rapporteur with a reply on 1 November 1996, in which it stated that Mr. Widjojanto had been summoned because of past activities related to his clients. When he had refused to respond to the summons because it did not necessarily reflect the difference between his client-attorney privileges and his past relationships with those persons, the summons had been corrected to meet his demands. The Government informed the Special Rapporteur, furthermore, that after the questioning session, Mr. Widjojanto had stated to the press that the Government's questions had not been related to client-attorney privileges. With regard to Muchtar Pakpahan, the Government informed the Special Rapporteur that he was not a lawyer and he had never worked as a representative of workers, nor was he a member of the organization mentioned. His arrest was related to his

participation in an illegal organization and his participation in activities which resulted in rioting on 27 July 1996, during which some people had been killed or injured.

Kazakstan

Mission

118. On 21 February 1996, the Special Rapporteur received a positive reply from the Government of Kazakstan to his request to be invited to that country. The Government requested the Special Rapporteur to indicate suitable dates for such a visit. Owing to other commitments, the Special Rapporteur was compelled to postpone the proposed mission.

Kuwait

119. The Special Rapporteur was informed about the needs-assessment mission to Kuwait carried out from 4 to 14 March 1996 by two staff members of the Centre for Human Rights under the programme of technical cooperation in the field of human rights. The Special Rapporteur took particular note of the part of their mission report relating to the administration of justice. The Constitution of Kuwait guarantees the independence of justice in article 163, and interference with the course of justice is prohibited. Civilian judges are granted life tenure.

120. The recommendations on the administration of justice contained in the report are of special interest to the mandate of the Special Rapporteur. He welcomes the fact that Kuwait is proceeding to ratify the International Covenant on Civil and Political Rights.

121. The mission recommended that the Government should review current laws and procedures relating to fair trial, regulations and standing orders relating to the administration of justice, penalties, the police, prisons and courts, with a view to ensuring their conformity with international human rights standards. Such a review should include emergency legislation, as protection of the right to a fair trial should be maintained after the declaration of martial law or other exceptional measures. In addition, it was recommended that the Government should provide human rights training to all personnel working within the administration of justice. The mission also recommended that there should be a judicial review of expulsion orders, and that an independent judiciary should be guaranteed in a strong Constitution, which would also limit emergency powers. In addition, the mission recommended the elaboration of a national training regime for lawyers and judges regarding human rights and democracy. Specific recommendations were made with regard to emergency legislation: a review of the current legal regime for states of emergency was needed and they should only be declared in conformity with the law. Even during a state of emergency, nobody should be held guilty of a criminal offence on account of any act or omission which did not constitute a criminal offence at the time it was committed. An independent and fully functioning judiciary must be protected. Nothing done pursuant to the state of emergency should diminish the jurisdiction of the courts to review the legality of the state of emergency or their jurisdiction over legal actions to protect any rights not affected by the declaration of the state of emergency.

Malaysia

Communication to the Government

122. In his second report to the Commission the Special Rapporteur expressed concern over allegations of impropriety in the Malaysian judiciary with regard to a few decisions of the courts. He also made reference to events that had aroused considerable public anxiety as to the integrity, independence and impartiality of the judiciary, and to the fact that he had issued a press statement indicating his intention to investigate the complaints (E/CN.4/1996/37, paras. 158-165).

123. Arising from those decisions and the concerns expressed, an article entitled "Malaysian Justice on Trial" was published in the November 1995 issue of International Commercial Litigation. Within a year from December 1995, those personalities and corporations that had received favourable rulings in the decisions and/or attempted to obtain such rulings in the judicial process, which had given rise to the Special Rapporteur's concern, as well as the lawyer who had appeared for them, served 13 writs, issued in the Malaysian court, alleging defamation against the author of the article in question, the publisher, a correspondent of the Asian Wall Street Journal, two lawyers, one of them the Secretary of the Bar Council, the partners in the latter individual's law firm, and lastly, on 12 December 1996, against the Special Rapporteur. The total amount claimed in these lawsuits is approximately MR 800 (US$ 320 million). The claimants allege that the article was defamatory of themselves and was based upon interviews the author had had with the defendants, including the Special Rapporteur.

124. In the article in question, wherever quotes were attributed to the Special Rapporteur, it was indicated that the statements had been made in his capacity as Special Rapporteur and that he was still investigating the complaints, and therefore that he had not reached any conclusions.

125. In December 1995 and March 1996, the Special Rapporteur received letters from the claimants' solicitors threatening legal proceedings for defamation. The Special Rapporteur immediately referred the matter to the Centre for Human Rights in Geneva and the Office of the United Nations Legal Counsel in New York. The Centre for Human Rights notified the solicitors for the claimants, by letter dated 22 December 1995, of the Special Rapporteur's immunity from legal process under the Convention on Privileges and Immunities of the United Nations (1946). On 28 December 1995, the Centre transmitted a note verbale to the Permanent Mission of Malaysia to the United Nations Office in Geneva requesting that the competent Malaysian authorities be advised of the Special Rapporteur's privileges and immunities and that they, in turn, advise the Malaysian courts of his immunity from legal process. On 29 March 1996, the Office of the Legal Counsel of the United Nations notified the Permanent Representative of Malaysia to the United Nations of the Special Rapporteur's immunity from legal process.

126. Despite these communications from the Secretariat, on 6 January 1997, the Special Rapporteur was served with the writ issued by the Malaysian High Court (referred to in para. 234 above) wherein the two corporations involved in the controversial decisions which had given rise to the concern of the

Special Rapporteur are claiming MR 60 million (US$ 24 million) in damages against him. Upon consultation and advice from the United Nations Legal Counsel, the Special Rapporteur entered conditional appearance and has applied to the court to set aside the writ on the grounds of his United Nations immunity from legal process. The Special Rapporteur's application is fixed for hearing before a judge on 12 March 1997. The application has been served on the solicitors for the claimants.

127. The Special Rapporteur has been informed by the Office of the Legal Counsel that it is liaising with the Government of Malaysia, through the Permanent Mission in New York, to assert his United Nations immunity in court.

128. In this regard, the Special Rapporteur wishes to place on record his appreciation to the Legal Counsel and the staff of his Office, in particular his Deputy, for their prompt attention to his matter and for all of their advice and assistance to date.

129. In another development, on [illegible]ugust 1996 the Special Rapporteur wrote to the Minister for Foreign Affa[illegible] of Malaysia inquiring into allegations that the Attorney General of Malaysia was proposing to amend the Legal Profession Act 1976 to provide inter alia:

(i) For non-private practitioners, including lawyers in full-time service in the Government, who are not advocates or solicitors admitted to practice, to become members of the Malaysian Bar;

(ii) That the Attorney General be statutorily appointed the President of the Malaysian Bar or, at least, exercise a controlling influence over the affairs of the Malaysian Bar;

(iii) That the Attorney General would appoint members to the Bar Council.

130. The Special Rapporteur also indicated to the Minister for Foreign Affairs that he had learnt that the proposed amendments were in retaliation to public statements issued by the Malaysian Bar Council in connection with events affecting the administration of justice in Malaysia.

131. The Special Rapporteur considers that, while there may be no objection to the enlarging of the Malaysian Bar to include those in full-time employment in government, in the universities and in commercial corporations, the motive of the Attorney General for such enlargement gives rise to concern. In a speech delivered at the annual dinner of the Medico-Legal Society of Malaysia on 19 July 1996, the Attorney General said, inter alia:

> "Because the Bar Council comprises only private practitioners, the Bar Council often forgets that it is a body corporate created by statute ... It frequently speaks as if it is a private law association, or an NGO or an opposition political party. It does not understand, nor seek to understand the various sensitive issues facing the Government. I have always reminded the leaders of the Bar Council that it can seek and have meaningful dialogues with the Attorney General's Chambers and the judiciary, to better understand and discuss the issues at hand, away

from the glare of media attention. If the leaders of the Bar Council can bring themselves to talk with genuine respect for judges and officers of the Crown, instead of taking positions by public statements and open criticisms of the judiciary and the Government, then and only then can there be a truly useful forum for us to discuss the various problems that beset our profession. Our profession is comprised of members of the judiciary, Government legal officers, law lecturers, as well as private practitioners ... not just private practitioners alone! We need a body, a Bar Council, that truly represents all branches of the legal profession ... so that our profession will truly be united. It is in this context that I look with admiration and respect to the medical profession. There is a lot that we can learn from the medical profession and how to organize and manage our profession. I have in my previous meetings with the President and leaders of the Bar Council stated that if the Bar Council does not take medication to cure itself, then it may have to undergo surgery to cure itself of its malignant illness ... They have not listened to my advice ... maybe surgery is not imminent or inevitable. My Chambers are presently preparing a paper with recommendations to the Government to reform the legal profession and, hopefully, with proper medication, a few minor surgeries, implantations and transplantations here and there, the legal body will be cured of its many ills and live a long and healthy life, contributing to the well-being of our Nation!"

The remarks reproduced above tend to indicate that the paramount motive for the proposed enlargement is to curtail the independence of the Malaysian Bar.

132. At an extraordinary general meeting of the Malaysian Bar convened on 21 September 1996 to consider the above-mentioned speech of the Attorney General, a record number of members of the Bar attended and adopted the following resolution:

"(i) The independence of the Malaysian Bar is vital to the democratic society of Malaysia, the Rule of Law and the independence of the judiciary, and is also essential to the growth of Malaysia as a leading commercial and economic entity in the region;

(ii) We therefore strongly oppose any measures to amend the Legal Profession Act 1976 that would have the effect of diluting or impairing the independence of the Malaysian Bar and/or the Bar Council."

133. The Special Rapporteur has not yet received a response from the Government of Malaysia to his letter, apart from an acknowledgment contained in a letter dated 8 October 1996.

134. In the light of these developments and in particular the current civil suit pending in the Malaysian courts, the Special Rapporteur has decided to postpone reporting to the Commission on Human Rights on his findings to date on the initial complaints referred to in his second report (E/CN.4/1996/37, paras. 158-165).

Mexico

Communications to the Government

135. On 7 May 1996, the Special Rapporteur sent an urgent appeal to the Government of Mexico concerning alleged death threats and acts of harassment against human rights lawyer Maria Teresa Jardí of the National Commission of Human Rights, her son, Julian Andrade Jardí and her assistant, Hector Gutierrez Ugalde. The threats reportedly are related to the work of Mrs. Jardí as a human rights lawyer, and to the work of her son, who was carrying out investigations into human rights violations committed by the security forces. In addition, the National Human Rights Commission has investigated several cases concerning human rights violations by individual members of the security forces, and had issued recommendations that individual members be sanctioned for criminal acts. (See also E/CN.4/1997/60/Add.1, para. 314.)

136. On 14 August 1996, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Government of Mexico concerning allegations that two lawyers, Pilar Noriega and Digna Ochoa, had received anonymous death threats. According to the information received, the threats might be related to their work as lawyers, since they had been involved in the defence of alleged members of the Zapatista Army for National Liberation. Both lawyers are members of the human rights centre "Centro de Derechos Humanos-Miguel Agustín Juárez" (PRODH). Other members of this organization have been threatened on previous occasions, on the allegation that it is involved in guerrilla activities. The Special Rapporteur on extrajudicial, summary or arbitrary executions has on several occasions intervened in such cases (see E/CN.4/1997/60/Add.1, para. 314).

Follow-up

137. On 10 June 1996, the Special Rapporteur sent a follow-up letter to the Government of Mexico, requesting updated information regarding the investigations into the assassination of Judge Polo Uscanga (see E/CN.4/1996/37, paras. 168-171).

Communication from the Government

138. On 21 May 1996, the Government provided the Special Rapporteur with a reply to the above-mentioned allegations. The kidnapping and ill-treatment of Mr. Gutierrez was under investigation and protection had been provided to Mrs. Jardí and her son, despite the fact that none of the victims had officially denounced the acts of intimidation and the threats.

139. On 1 October 1996, the Government provided the Special Rapporteur with a reply to his communication of 14 August 1996 concerning alleged death threats against Pilar Noriega and Digna Ochoa, lawyers with PRODH and members of the National Front of Democratic Lawyers. Despite the fact that the Human Rights

Commission of the Federal District had not received a complaint regarding the threats, the General Procurator of the Federal District and the Secretariat of Public Security had been requested to take protection measures for the two persons in question.

140. On 12 November 1996, the Government provided additional information with regard to the above-mentioned case. The Government informed the Special Rapporteur about the security measures taken in order to protect the PRODH office. In addition, the Government informed the Special Rapporteur that the two lawyers had informed the Office of the General Procurator that for the moment they did not require any protection.

141. The Rapporteur would like to refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, in relation to the case of Conception Hernandez Mendez, a lawyer, who allegedly received death threats because of her work as a defender of the rights of indigenous peoples (see E/CN.4/1997/60/Add.1, para. 314).

Nigeria

142. For a detailed analysis of the situation of human rights in Nigeria, the Special Rapporteur wishes to refer to the interim report on the situation of human rights in Nigeria, which was submitted to the General Assembly (A/51/538) and the final report, which the Commission on Human Rights has before it (E/CN.4/1997/62). Both of these reports were submitted jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Commission on Human Rights resolution 1996/79. Following their forthcoming visit to Nigeria, the Special Rapporteurs will submit a report to the Commission on the findings of their mission.

Pakistan

Communication to the Government

143. On 10 June 1996, the Special Rapporteur transmitted to the Government of Pakistan an urgent appeal regarding alleged threats and acts of harassment against a lawyer, Asthma Jahangir, and her family, owing to her defence of a 21-year-old woman in a habeas corpus petition filed by the young woman's father. The Special Rapporteur requested the Government to provide Mrs. Jahangir and her family with adequate protection and to investigate the allegations.

144. On 26 July 1996, the Special Rapporteur addressed a letter to the Government of Pakistan in response to the Government's communication of 21 June 1996 (see paragraph below), regarding the case of Ms. Asthma Jahangir. The Special Rapporteur stated that the incidents referred to in the Government's response seemed to refer to incidents which had occurred in 1995. He therefore requested the Government to provide him with information regarding the threats that had occurred in 1996 referred to in his earlier communication.

145. On 16 July 1996, the Special Rapporteur sent a joint letter with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on

the question of torture to the Government of Pakistan concerning the murder of Mr. Nizam Ahmed, a former justice of the Sindh High Court and member of the Pakistan Bar Council, and his son Nadeem Ahmed. It was brought to the attention of the Special Rapporteurs that Mr. Ahmed had received anonymous death threats, prior to his murder, in which demands were made that he withdraw a case that he had filed with the Sindh High Court in Karachi. The source indicated that although these threats were reported to the authorities, no steps were taken to investigate the allegations or to provide Justice Ahmed with protection.

Communication from the Government

146. On 21 June 1996, the Government provided the Special Rapporteur with a reply to his letter of 10 June 1996 concerning the case of Ms. Asthma Jahangir. The information provided by the Government referred to an incident that had occurred in 1995, in reaction to which the authorities had provided Ms. Asthma Jahangir with protection. The Special Rapporteur was informed that additional information regarding the case had been requested from the authorities in Pakistan.

Observation

147. In his second report, the Special Rapporteur referred to a challenge before the Supreme Court to the constitutionality of the appointment of ad hoc judges to the Supreme Court (E/CN.4/1996/37, para. 201). The Supreme Court, after hearing lengthy arguments, issued what it considered a landmark decision on 20 March 1996. The Special Rapporteur welcomes this decision which, inter alia, asserted the independence of the judiciary with regard to the appointment of judges. In effect, the judiciary by this decision asserted the power of appointment of the judiciary rather than of the executive, which was the position previously.

Peru

Communications to the Government

148. On 19 November 1996, the Special Rapporteur transmitted an urgent appeal to the Government of Peru, regarding the attempt against the life of the President of the Constitutional Tribunal, Mr. Nugent, on 8 November 1996. The Special Rapporteur expressed his concern about this information and requested the Government to carry out exhaustive investigations, reminding the Government of its obligation to guarantee protection to judges who are put under such pressure.

149. On 12 December 1996, the Special Rapporteur sent an urgent appeal to the Government of Peru, concerning disciplinary measures taken by the Supreme Council of Military Justice against a lawyer, Heriberto Benítez. Mr. Benítez, had reportedly been suspended from office for five months, during which time he would not be allowed to represent his clients. The measure was related to his public statements concerning the composition of the Supreme Council of Military Justice and, in particular, concerning the fact that some members of the Council were not lawyers and thus would not be familiar with the content of the law. Mr. Benítez was reported to have made these statements in

connection with the detention and prosecution of his client, retired General Robles, who was reported to have publicly stated that a paramilitary group was responsible for an attack against a television station in November 1996. The Special Rapporteur was also informed that Mr. Benítez had been notified of the opening of criminal investigations against him for his statement regarding the members of the Supreme Council of Military Justice. According to the information received, Mr. Benítez had previously been detained for 24 hours on similar charges while working on the case of the La Cantuta massacre. The source expressed fear that a similar situation would occur again.

Communications from the Government

150. On 15 April 1996, the Government informed the Special Rapporteur about the appointment of the first Ombudsman in Peru.

151. In communications dated 3 October 1996 and 7 November 1996, the Special Rapporteur was informed about the release of a number of innocent prisoners who had been held in detention under anti-terrorism legislation. Their release was based upon recommendations of the Ad Hoc Commission on Pardons, which had been established to make recommendations to the President on pardoning innocent detainees.

152. On 7 November 1996, in response his communication of 25 July 1995 concerning lawyer Tito Guido Gallegos (see E/CN.4/1996/37, para. 205), the Government informed the Special Rapporteur that Mr. Tito Gallegos had been appointed as a judge of the High Court of the judicial district of Puno by a resolution of the National Council of the Judiciary.

Follow-up

153. On 10 June 1996, the Special Rapporteur sent a follow-up letter thanking the Government of Peru for providing him with information regarding the protection measures taken with regard to the threats against Judge Antonia Saquicuray Sánchez and the human rights lawyer, Tito Guido Gallegos (see E/CN.4/1996/37, paras. 205-207). He requested the Government to provide him with information on the results of the investigations. In addition, the Special Rapporteur reminded the Government of his communications to which he had not yet received a reply, regarding the cases of Margarita Chuquiuru Silva, of human rights lawyers of the Pro Human Rights Organization (APRODEH) and of Lori Berenson (see E/CN.4/1996/37, paras. 207-209).

154. At the time the present report was finalized, no reply had been received to that letter.

155. The Special Rapporteur would also like to refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions in relation to the case of a lawyer, Gloria Cano Legua, who has reportedly been threatened and harassed (E/CN.4/1997/60/Add.1, para. 384).

Philippines

156. The Special Rapporteur would like to refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions in relation to the case of a lawyer, Ferdinand Reyes, who was reportedly killed on 12 February 1996, supposedly for his criticism of government policy (E/CN.4/1997/60/Add.1, para. 393 (f)).

Rwanda

157. The Special Rapporteur has continued to receive reports from the United Nations Human Rights Field Operation in Rwanda (HRFOR) on justice, legal reform and institution-building in Rwanda. In its report of October 1996, HRFOR reported that while there had been positive developments in the past year (for example, the "National awareness campaign on the judicial system" was successfully launched in October), there remained concerns that there were serious shortcomings in the administration of justice. Not only was there a serious shortage of judges, clerks and material resources for the courts, and a shortage of defence lawyers, but there had also been serious allegations that the military of Rwanda had acted in contravention of judicial orders.

158. On 23 January 1997, the Special Rapporteur sent an urgent appeal, jointly with the Special Rapporteur on the situation of human rights in Rwanda and the Special Rapporteur on extrajudicial, summary or arbitrary executions, on behalf of Deogratias Bizimana and Mr. Egide Gatanazi, both of whom had been sentenced to death after the High Court in Kibungo found them guilty of genocide and crimes. The source alleged that the defendants had no access to legal counsel either before or during trial and that they were not given adequate time to prepare their defence. The source also reported that the defendants were booed and prosecutors applauded during the trial, without intervention by the presiding judge. Further, most of the judicial officials have received only up to four months' training and there were serious questions as to the independence and impartiality of the judicial officials following statements by some judicial and government officials that the defendants should not request legal counsel.

Tunisia

Communication to the Government

159. On 22 May 1996, the Special Rapporteur transmitted an urgent appeal to the Government of Tunisia regarding the case of lawyer and human rights defender Najib Hosni, who on 22 May 1996 had reportedly been convicted to eight years' imprisonment. According to the information received, he had been convicted by the Appeal Court of el-Kef, without having the right of defence, since the 30 lawyers who were assisting him had left the hearing room in order to protest the refusal of the court to postpone the proceedings. The postponement had been requested on 25 December 1995 to allow the lawyers adequate time to prepare the defence. It was also reported that Mr. Hosni had

stated that he had not been fully informed about the details of the charges against him. In addition, the source stated that he did not have the right to appeal. It has been alleged that the trial might be linked to his work as a human rights defender.

160. On 22 October 1996, the Special Rapporteur transmitted a letter to the Government of Tunisia concerning the case of human rights defender and parliamentarian Khémais Chammari, who had reportedly received a five-year prison sentence on charges of leaking secret information to foreign powers in a case bearing on national security. According to the information received, Mr. Chammari had passed documents to a European international lawyer concerning the case of Mr. Mouadda, leader of the opposition Social Democratic Party (MDS) who, in October 1995 was convicted to 11 years' imprisonment on charges of having relations with a foreign power. In addition, the Special Rapporteur was informed that Mr. Chammari and Mrs. Alya Chammari, his wife and a lawyer, were suffering acts of intimidation and threats from the police and security forces, related to his activities on behalf of Mr. Mouadda. Further, it was alleged that Mr. Chammari's imprisonment was the result of his non-violent activities in defence of human rights and civil liberties in Tunisia.

Communication from the Government

161. On 21 June 1996, the Government provided the Special Rapporteur with a reply in the case of Najib Hosni. The Government informed the Special Rapporteur that Mr. Najib Hosni had in fact had access to defence counsel, and stated that the withdrawal of the lawyers during the proceedings had been an attempt to influence the court's decision. The Government further stated that the allegation that Mr. Hosni did not have the right to appeal was unfounded, since under the Tunisian judicial criminal system decisions were subject to an application for review by the Court of Cassation. In addition, the Government stated that his detention was not linked to his activities as a human rights lawyer, but based on specific acts punishable under ordinary law.

162. On 29 November 1996, the Government provided the Special Rapporteur with a reply concerning the case of Mr. Khémais Chammari. The Government informed the Special Rapporteur that Mr. Chammari's conviction was not related to his work as a defender of human rights and that no official complaints about the alleged threats and acts of intimidation and harassment had been received by the authorities. The Government also stated that the files had been fully at the disposal of the lawyers. The composition of the court had been changed at the request of Mr. Chammari, and his right to be tried by an independent and impartial tribunal had been fully respected. Lastly, the Special Rapporteur was informed that the Supreme Court, which has the competence to decide whether it is necessary to postpone a case, which rarely occurs, had decided that in this case it was not necessary to do so. The Government stated that the allegation that the defence lawyers had not had sufficient time to prepare the case was unfounded.

163. On 20 December 1996, the Government of Tunisia informed the Special Rapporteur that lawyer Najib Hosni, for whom an urgent appeal had been sent on

22 May 1996 and who had been convicted to eight years' imprisonment for the falsification of documents and their possession, had been liberated on 14 December 1996.

164. On 3 January 1996, the Special Rapporteur was informed by the Government of Tunisia that Mr. Khémais Chammari had been conditionally released from prison, for humanitarian reasons.

Turkey

Communication to the Government

165. On 16 February 1996, the Special Rapporteur transmitted to the Government of Turkey an urgent appeal concerning the reported trial of Turgat Inal, the former Chairman of the Balikesir Bar Association. According to the information received, he had been brought to trial on charges relating to an article he had written which was included in a book published in June 1995 by the Human Rights Foundation of Turkey (HRFT). Mr. Inal, together with the nine members of the executive board of HRFT, were reportedly charged with "insulting the laws of the Republic". The Special Rapporteur expressed concern that the prosecution of Mr. Inal for publishing his criticism of Turkish law might interfere with his freedom of opinion and expression. The Special Rapporteur's view is that this would appear to be an unwarranted restriction on the duty of lawyers to take part in public discussions of matters concerning the law.

166. On 7 May 1996, the Special Rapporteur transmitted an urgent appeal to the Government of Turkey concerning Mr. Huseyin Umit, a lawyer and board member of the Hakkari branch of the Turkish Human Rights Association (HRA). According to the information received, Mr. Umit was detained without an arrest warrant on 29 March 1996, and released after several hours. During his detention his house and offices of the HRA were searched. The source claimed that those steps were taken against Mr. Umit solely because of his activities as a human rights lawyer. In addition, since his release, Mr. Umit was reported to have received death threats.

Communication from the Government

167. On 4 June 1996, the Government provided the Special Rapporteur with a reply to his communication of 16 February 1996 concerning the case of Mr. Turgut Inal. The Government informed the Special Rapporteur that the case was "under way". The Government expressed its view that excerpts of articles published by Mr. Imut showed that the article openly attempted to degrade and insult Turkish law and the Constitution. Thus, in accordance with article 159/3 of the Turkish Penal Code, "those who vilify the laws of the Turkish Republic or the decisions of the Turkish Grand National Assembly shall be punished". The trial was, in the Government's view, not aiming at the exercise of the freedom of expression concerning the law, the administration of justice or the promotion and protection of human rights. Furthermore, the Government stated that the lawyer had not complied with Principle 23 of the Basic Principles on the Role of Lawyers: "in exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession".

168. On 8 July 1996, the Government provided a reply to the Special Rapporteur's communication of 7 May 1996 concerning the case of Mr. Huseyin Umit. Grounds for the detention of Mr. Umit were found in documentary evidence, gathered during operations conducted by the security forces in the neighbouring mountains on 27 March 1996, which indicated that he had provided financial assistance to the terrorist organization PKK. The searches, however, had provided no evidence pointing to the alleged crime. The Government further stated that Mr. Umit had never been arrested, and that he had been released after interrogation.

Request for a mission

169. On 28 June 1996, in a letter to the Government of Turkey, the Special Rapporteur reiterated his interest in undertaking a mission to Turkey, as previously expressed in his letter of 16 February 1996. At the time the present report was finalized, no reply to this request had been received from the Government.

United Kingdom of Great Britain and Northern Ireland

England and Wales

170. In his second report, the Special Rapporteur expressed concern over comments by ministers and/or highly placed government personalities on decisions of the courts made on judicial review of administrative decisions of the Home Secretary (E/CN.4/1996/37, para. 226).

171. Arising from this controversy, the relationship between the judiciary, the legislature and the executive was the subject of a lively six-hour debate in the House of Lords on 5 June 1996 on a motion moved by the Shadow Lord Chancellor (Lord Irvine of Lairg). The Special Rapporteur was present in the House of Lords to listen to the debate. The thrust of the debate was the role of judges in the development of the law, their independence and the extent to which judges should participate in public discussion of developments in the law.

172. In the course of the debate, the Lord Chancellor (Lord Mackay of Clasfern) said, on the issue of the independence of the judiciary:

> "We also have a judiciary whose independence, as individual judges, from one another and from any improper influence, is also superb and complete. I certainly do not know of anyone who has successfully attempted - or indeed has attempted without success - to influence the decisions of the judges in the cases committed to them. The essence of judicial independence is that the judge trying the case is free to decide according to his judgement in the light of the existing law. That applies to the individual case and that is the essence of judicial independence.
>
> The independence of the judiciary - in agreement for example, with my noble and learned friend, Lord Simon of Glassdale - is an important part of the checks and balances of our constitution. The jurisdiction which the judges exercise right across the board is fundamental to the rule of

law. I agree with the view that the rule of law is a deeper concept than just that of law and order." (Hansard 1996, vol. 572, No. 100, p. 1308)

173. There was consensus among the Lords that it was quite proper, and some like Lord Woolf, the Master of the Rolls, said that it was fundamental, that judges and lawyers should be able to participate in public discussion of developments in the law. The Lord Chancellor said: "Public lectures have been a well authenticated way of doing that over many years".

174. The Shadow Lord Chancellor expressed his personal hostility to any legislative attempt to restrict judicial review, which he believed directly promoted the rule of law. He assured the House that "The role and independence of the judiciary will be vigorously upheld by the next Labour government". (Hansard 1996, vol. 572, No. 100, p. 1314).

175. On 6 June 1996, the Special Rapporteur called on the then newly appointed Lord Chief Justice, Lord Thomas Bingham, at his Chambers in London. The Lord Chief Justice assured the Special Rapporteur that he regarded judicial independence as firmly entrenched in the United Kingdom. He further assured him that judges did not feel themselves under any pressure in relation to judicial decisions.

176. The Special Rapporteur welcomes the expressions of commitment by the Lord Chancellor and the Shadow Lord Chancellor and the assurance of the Lord Chief Justice. In this regard, the Special Rapporteur has not received any specific allegations that the independence of any particular judge was threatened. His concern was more with regard to the threat to the institutional independence of the judiciary. From the tone of the House of Lords debate, the Special Rapporteur is confident that any legislative attempt to restrict judicial review will be strongly resisted, at least in that House.

Northern Ireland

177. In his second report, the Special Rapporteur made reference to information received with regard to difficulties experienced by "high risk" prisoners in obtaining access to legal advice/representation (E/CN.4/1996/37, para. 229). The Special Rapporteur continued to receive information in this regard. In the latest submission of information to the Special Rapporteur in December 1996 by British-Irish Rights Watch, it was alleged, inter alia, that there were attempts to restrict lawyers' access to their clients in Northern Ireland police stations and English prisons; to failure of the judiciary and of government appointed functionaries to uphold lawyers' rights; to proposals that would allow clandestine surveillance of lawyers' offices.

178. In response to the above-mentioned report from British-Irish Rights Watch, the Independent Commissioner for the Holding Centre for Northern Ireland submitted a memorandum dated 17 January 1997 to the Special Rapporteur. The Independent Commissioner expressed the view, inter alia, that he might favour "an independent investigation into the nature and extent of any intimidation of defence solicitors". The Special Rapporteur also received

a letter, dated 31 January 1997, from the Chairman of the General Council of the Bar of Northern Ireland in response to the allegations submitted to the Special Rapporteur by the British-Irish Rights Watch.

179. In the light of the latest submission from British-Irish Rights Watch and the response from the Independent Commissioner and the Chairman of the Northern Ireland Bar Council the Special Rapporteur is considering, subject to the availability of resources, seeking the permission of the Government of the United Kingdom to visit Northern Ireland for an in situ investigation into the allegations he has received on the situation in Northern Ireland

United States of America

180. On 2 April 1996, the Special Rapporteur sent an urgent appeal to the Government of the United States of America concerning Judge Harold Baer Jr. of the Federal District Court of Manhattan. According to the source, President Clinton and Senator Bob Dole had called for the resignation and impeachment of Judge Baer as a result of his ruling in a drugs-related case. The Special Rapporteur expressed his concern that, if true, the allegation would amount to executive intimidation of the independence of the judiciary.

181. On 17 June 1996, the Special Rapporteur transmitted an urgent appeal to the Government concerning statements made and actions taken by Governor George E. Pataki of the State of New York. According to the information received, Governor Pataki had pressured District-Attorney Robert T. Johnson to seek the death penalty in a murder case in which the victim was a police officer. It was furthermore alleged that Governor Pataki removed Mr. Johnson from the case pursuant to a State law that grants the Governor the power to remove district attorneys in specific cases, a law which was only used in cases where a prosecutor or his office asked to be excused from a case, or had been suspended for misconduct.

Communication from the Government

182. On 21 May 1996, the Permanent Representative of the United States of America provided a reply to the Special Rapporteur's communication of 4 April 1996. The Special Rapporteur was informed that the President had at no time called for the resignation of Judge Baer. According to the Permanent Representative, the matter was addressed in a letter from the Counsel to the President to several members of Congress who had expressed their disapproval of the decision by Judge Baer to suppress evidence in a drug trafficking case and had demanded that the President seek his resignation. The letter states:

> "The President has made clear that he believes Judge Baer's decision is grievously wrong, not only in its results but also in its totally unjustified criticism of the New York City Police and its suggestion that it is acceptable behavior for anyone to run from the police. The President's views on this matter are represented by the U.S. Attorney for the Southern District, his chief law enforcement officer in Manhattan, who brought the prosecution in the first place and against whom Judge Baer ruled. Immediately after the decision, the President instructed me to ascertain that the U.S. Attorney was prepared to challenge the judge's decision vigorously. The U.S. Attorney is in fact

vigorously challenging the Judge's order. And, it is only because of the U.S. Attorney's pursuit of this case that Judge Baer eventually agreed to rehear the motion and consider additional police testimony. The President hopes that Judge Baer will reverse his earlier decision. If he does not, the President will direct the Justice Department to appeal the decision.

The proper way for the Executive Branch to contest judicial decisions with which it disagrees is to challenge them in the courts, exactly as the Clinton Administration is doing in this case. The President supports the independence of the federal judiciary, which is established by the Constitution. Although comments in recent press reports may have led some to conclude otherwise, the President believes that the issue now before Judge Baer should be resolved in the Courts."

Observations

183. The Special Rapporteur welcomes the statements made by the President in support of the independence of the judiciary and is in full agreement with the assertion that the proper way for the Executive Branch to contest judicial decisions with which it disagrees is to challenge them in the appellate courts. Nevertheless, the Special Rapporteur is of the view that harsh, public criticism of a judicial decision by the Executive Branch, particularly in a politically charged environment in which prominent legislators and politicians are calling for the resignation of the particular judge who has rendered a controversial decision, can have a chilling effect on the independence and impartiality of the judiciary. In this regard, the Special Rapporteur notes that subsequently Judge Baer did in fact reverse his earlier decision, thus causing concern among legal circles that the same judge may have done a disservice to judicial independence by reversing his own decision under external pressure.

Uzbekistan

Communication to the Government

184. On 23 April 1996, the Special Rapporteur transmitted an urgent appeal to the Government of Uzbekistan concerning the reported harassment by State security organs against Mrs. Paulina Braunerg, an attorney and board member of the Human Rights Society of Uzbekistan. On 14 March 1996, Mrs. Braunerg's house was reportedly searched by security agents, who confiscated newspapers which reportedly published outside Uzbekistan. On the same day, she was reportedly interrogated about these newspapers, as well as about her participation in a human rights conference in 1995 in Kazakstan. According to the information received, she was again interrogated, on 15 March 1996, about her contacts with human rights activists and organizations abroad, but no official charges were brought against her.

Communication from the Government

185. On 15 May 1996, the Government provided the Special Rapporteur with a reply to his communication of 23 April 1996 concerning the interrogation of Mrs. Paulina Braunerg. The Government informed the Special Rapporteur that

during an authorized search of Mrs. Braunerg's house in connection with the investigation of an ordinary crime, the authorities found literature distorting the situation in Uzbekistan. As a result, on 16 March 1996, Mrs. Braunerg was invited to the National Security Service (SNB) for an interview, during which she was reported to have expressed her regret about the incident. She was also said to have left the literature in the office of the SNB. The Government reported to the Special Rapporteur that the criminal investigation of the ordinary crime was continuing.

VI. CONCLUSIONS AND RECOMMENDATIONS

186. This is the third year of the Special Rapporteur's mandate. Recalling the historical background to this mandate and the circumstances leading to its creation by the Commission on Human Rights, the Special Rapporteur is convinced that, though attacks on the independence of judges and lawyers have not diminished, there is, today, greater awareness of the importance of the independence and impartiality of the judiciary and the independence of lawyers for constitutional government under a democracy based on the rule of law. This is evidenced by the large amount of correspondence that the Special Rapporteur has received pertaining to his mandate in the past year, much of which, owing to inadequate resources, it has not been possible to process, analyse and follow up. It is further evidenced by the various invitations the Special Rapporteur received to participate in legal workshops, seminars and conferences.

187. The Special Rapporteur's participation and involvement in these meetings and the dissemination of his addresses and interviews by the media in the different regions have contributed to a better understanding of his mandate and its significance in the global human rights agenda.

188. The extent of implementation of the Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers, the two leading United Nations instruments spelling out minimum standards to be applied by Member States for the realization of an independent justice system, is a matter of paramount consideration under this mandate. To this end, the Special Rapporteur appreciates the survey undertaken by the Crime Prevention and Criminal Justice Division in Vienna on the implementation of the Basic Principles on the Independence of the Judiciary. The information collated from the responses of Member States and bar associations is of relevance for gauging the state of judicial independence in countries and addressing problems associated with the implementation and the adequacy of the Basic Principles. The Special Rapporteur appeals to Member States and bar associations which have not responded, to do so without delay. The Special Rapporteur intends to work closely with the Division in Vienna in this exercise.

189. The Special Rapporteur has learnt that the Economic and Social Council, in its resolution 1996/16, decided that the Commission on Crime Prevention and Criminal Justice should to consider the report of the Secretary-General on the desirability of establishing an inter-sessional working group at its sixth session to examine the reports on the use and application of standards and norms in crime prevention and criminal justice in more detail. He has also learnt that a similar survey on the implementation of the Basic Principles on

the Role of Lawyers and the Guidelines on the Role of Prosecutors is anticipated. Pending the survey on the latter two standards, the Special Rapporteur will discuss with the Division the feasibility of the establishment of a working group especially to review the results of the survey on the Basic Principles on the Independence of the Judiciary.

190. From the information gathered in the past three years, it is clear that attacks on the independence of judges and lawyers are not confined to the underdeveloped and developing countries. The Special Rapporteur has noted in his previous report and in the present report, that developed countries too are not spared these problems. Hence, the threat to the independence of judges and lawyers is universal and needs constant international vigilance.

191. This thematic mandate is wide in scope. To date, not all its parameters have been examined. With greater awareness there will be greater expectations, among them those of the emerging new democracies, which may seek advice on specific issues for the structuring of independent justice systems. Further, the mandate covers different legal systems. And materials submitted, all of which need to be analysed and responded to, may be in different languages. Disappointing those who approach the Special Rapporteur, on grounds of want of resources, would be a negation of the aspirations inherent in the terms of this mandate.

192. The Special Rapporteur views the project currently being undertaken by the Activities and Programmes Branch of the High Commissioner/Centre for Human Rights for the preparation of a manual for the training of judges and lawyers as important. Such a manual would complement significantly the work of the Special Rapporteur. As a standard global training manual, it would have to be acceptable in all regions of the world. The project may require additional funding to organize a meeting of experts, drawn from all the regions, of sufficient duration to enable them to study the draft in a meaningful way and to approve it. The Special Rapporteur trusts that such funding would be forthcoming.

193. In the two previous reports, the Special Rapporteur referred to several theoretical issues of special importance which he strongly felt should be studied and analysed. However, owing to lack of resources - both human and financial - the Special Rapporteur has not been able to pursue those research programmes.

194. Although some Governments have been slow in responding to his communications and some have completely ignored them, the Special Rapporteur has found that a majority of Governments do respond to his interventions and urgent appeals. In some cases, the Special Rapporteur's intervention and involvement had a salutary effect. This is significant for the mandate. The cooperation extended by non-governmental organizations, particularly the international organizations, has been significant.

195. The Special Rapporteur is convinced that there is a very real need for the continuation of the monitoring mechanism envisaged under the mandate. With adequate resources, there is considerable potential for this mandate to contribute in a positive and meaningful way towards the realization of the Vienna Declaration and Programme of Action. An independent judicial system is

the constitutional guarantee of all human rights. The right to such a system is the right that protects all other human rights. Realization of this right is a sine qua non for the realization of all other rights. This mandate, therefore, should be accorded its rightful place in the human rights agenda of this Commission.

196. The Special Rapporteur concludes this third report by emphasizing and reiterating again that there can only be meaningful and constructive realization of what is expected of this mandate if the Special Rapporteur is provided with adequate resources, both human and financial. Human resources, at least some, must be permanent for purposes of continuity, and not temporary and transient.